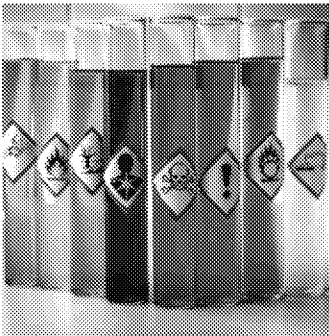


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**Subject:** Pesticides & Toxic Substances Law News for March 24, 2020



## Pesticides & Toxic Substances Law News for March 24, 2020

**Bloomberg  
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**Environment & Energy**

## Highlights

## LEADING THE NEWS

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### Court Revives Challenge to EPA Policy on Science Advisers (1)

By Ellen M. Gilmer

A federal judge must take another look at claims that the EPA overstepped when it adopted a new policy tightening membership requirements for powerful scientific advisory boards, a federal appeals court ruled Monday.

### Push to Tie Green Strings to Emergency Aid Condemned by GOP

By Jennifer A. Diouhy and Ari Natter

Corporate interests aren't the only ones seeking a piece of the \$2 trillion bailout plan working its way through Congress. Environmentalists are also eager to attach strings to the emergency aid -- and drawing the ire of Republicans.

## CHEMICALS

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### EPA Ruling Could Allow Controversial Nanoparticles in Pesticides

By Adam Allington

An antimicrobial chemical used to treat textiles is expected to get EPA approval, despite concern over the potential health risks associated with its microscopic parts, known as nanoparticles, attorneys say.

## EPA

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No new stories today.

## INSIGHT

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### INSIGHT: Attorneys Should Relearn Rules of Civility

Basic tenets of civility and decorum in the legal profession are being drowned out by a win-at-any-cost mentality, writes Gerald Sauer, founding partner at Sauer & Wagner LLP in Los Angeles. Legal rules, ethics standards, and principles of civility were established not for the purpose of being pushed and broken, but to ensure a system of fairness, he says.

## CLIMATE

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## Latest News

### In Latest EPA Loss, 1st Circuit Finds Science Advisor Policy Unlawful

A federal appellate court has found that EPA's controversial policy barring agency grant recipients from serving as EPA science advisors is unlawful because it skewed representation on the panels toward state and industry representatives, the second court defeat for the controversial policy in the past few weeks. **FULL STORY**

### Environmentalists Seek 'Immediate' EPA Action On TCE Ahead Of Review

As science advisors prepare to review EPA's draft evaluation of the common solvent trichloroethylene (TCE), environmentalists and former officials are urging the agency to take "immediate action" to address any "imminent and serious" acute risks while also calling for the draft to be strengthened so the substance can be banned going forward. **FULL STORY**

## Daily Feed

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## Environment Next

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AN E&E NEWS PUBLICATION

## PANDEMIC

### McConnell slams Democrats over environmental demands



White House Legislative Affairs Director Eric Ueland and Treasury Secretary Steven Mnuchin on Capitol Hill this morning for talks on the coronavirus stimulus bill. Tasos Katopodis/UPI/Newscom

Lawmakers on Capitol Hill struggled today to wrap up negotiations on the stalled third relief package for the coronavirus pandemic amid intense lobbying by environmentalists and climate advocates to bolster the clean energy sector.

Republicans spent the morning and early afternoon accusing Democrats of attempting to add extraneous clean energy provisions to the legislation, including extensions of tax credits for solar and wind and emissions standards for airlines.

"Here are some of the items on the Democratic wish list over which they chose to block this legislation last night: tax deductions to solar energy and wind energy; provisions to force employers to give special new treatment to big labor; and, listen to this, new emissions standards for the airlines," Senate Majority Leader Mitch McConnell (R-Ky.) said on the floor. "Are you kidding me?"

McConnell added that Democrats "won't let us fund hospitals or save small businesses unless they get to dust off the Green New Deal."

The Senate could vote again on the legislation as soon as this afternoon, but publicly, Democrats' objections had little to do with clean energy. Minority Leader Chuck Schumer (D-N.Y.) didn't even mention the issue during his opening remarks on the floor this morning.

Democrats said they voted down the more than \$1 trillion bill in a procedural motion yesterday to get more oversight for companies getting government loans and more money for health care facilities.

"We've been guided by one plan: workers first. That is in the name of our proposal," Schumer said in his own remarks on the floor this morning. The bill, he said, "needs to reflect that priority."

Top Democrats have given few indications that they're pushing intensely to add solar and wind incentive extensions to this round of congressional aid, though lawmakers on both sides of Capitol Hill have suggested the idea as a way to bolster the clean energy sector.

Some senators, such as Sheldon Whitehouse (D-R.I.), have also said they want to tie aid to airlines to carbon emissions reductions.

McConnell's attacks, however, came after Democrats said they would press for relief for clean energy interests if Republicans insisted on bringing President Trump's pledge to fill the federal Strategic Petroleum Reserve into the talks.

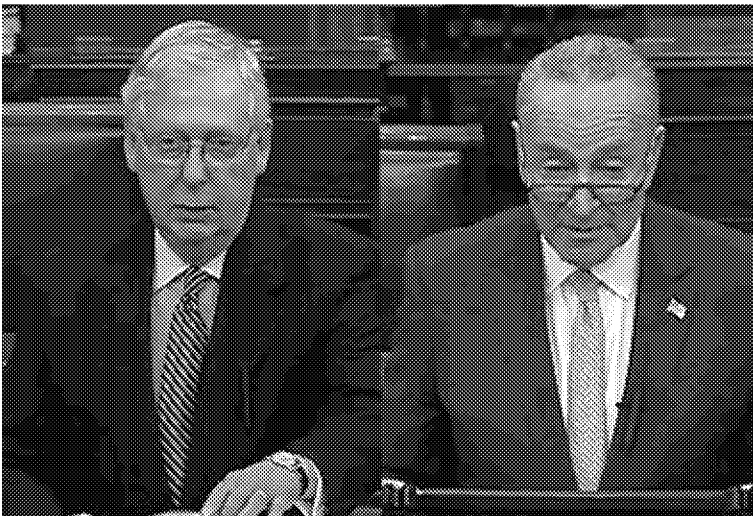
A Senate GOP draft circulating over the weekend would appropriate \$3 billion to purchase private-sector crude.

"If we're going to include relief for oil producers via SPR buys, Congress should also include assistance for clean energy companies who are facing their own unique challenges," a Democratic aide told E&E News.

## Pelosi bill

Proceedings got ugly on the Senate floor, with frustrated lawmakers lashing out at each other over parliamentary procedure. Schumer at one point blocked Republican Sen. Susan Collins of Maine from speaking.

McConnell then raised his voice several times as members tried to address the floor and figure out the vote schedule. The majority leader and other Republicans have also pointed the finger at House Speaker Nancy Pelosi (D-Calif.) for the breakdown of negotiations over the weekend.



Senate Majority Leader Mitch McConnell (R-Ky.) and Minority Leader Chuck Schumer (D-N.Y.) on the floor this morning. C-SPAN

But Schumer said Senate Republicans, Democrats and members of the administration continue to negotiate and were close to a deal. Treasury Secretary Steven Mnuchin left Schumer's office after midnight and was back at 9 this morning, Schumer said.

The picture on clean energy may come into focus this afternoon, when Pelosi is expected to outline the House Democrats' idea of an economic stimulus bill. A brief outline of the legislation provided by her office this morning did not mention energy or environmental issues.

"The Senate Republicans' bill, as presented, put corporations first, not workers and families," Pelosi said in a statement. "Today, House Democrats will unveil a bill that takes responsibility for the health, wages and well-being of America's workers: the Take Responsibility for Workers and Families Act."

But it's clear that environmental groups are going to lobby for climate and clean energy language as long as Congress is still negotiating (*E&E Daily*, March 23).

"We will be working with congressional leadership as they consider additional emergency measures to protect workers and industries directly impacted by the crisis," said Mike Saccone, a spokesman for the National Wildlife Federation, by email late last week.

"We will be underscoring how any emergency measures should be linked to sustainability and climate-smart standards, like the improved vehicle mileage standards in the automotive bailout," he said.

## 'Green stimulus'

The most ambitious proposal of all from the environmental world is a \$2 trillion "green stimulus," which is co-authored by several advisers to Democratic presidential campaigns and endorsed by a variety of greens and academics.

In an open [letter](#) to lawmakers, dozens of greens and wonks offered a menu of policy options to boost the clean energy transition in the face of the COVID-19 pandemic.

Taken together, the recommendations would essentially amount to a major climate policy package, including everything from a federal clean electricity standard to funding boosts for existing energy efficiency programs.

Many of the proposals — such as massively boosting the Department of Energy's Weatherization Assistance Program, Low Income Home Energy Assistance Program and Advanced Research Projects Agency-Energy — are standard fare for climate advocates.

Overall, the \$2 trillion initial stimulus would precede an annual spending program totaling 4% of U.S. gross domestic product "until the economy is fully decarbonized and the unemployment rate is below 3.5%."

The authors call the current crisis "an inflection point for our nation."

"It is heartening to recognize the very broad range of technologies and policy tools at our disposal to ensure that recovery from the COVID-19 pandemic can also dramatically improve the living standards of those most in need — a majority of Americans, in fact," they wrote.

Daniel Aldana Cohen, one of the plan's authors, said it is largely a result of lessons that he and others learned from the American Recovery and Reinvestment Act of 2009 and other economic stimulus efforts in that time period. Cohen is a sociology professor at the University of Pennsylvania who helped advise Sen. Bernie Sanders' campaign on climate and environmental matters.

"This is a moment when a ton of the preparatory paperwork can get done, regulatory changes, bridge loans, financial measures can be taken, so that when people are ready to get back to work, the best projects are shovel ready," Cohen told E&E News. "We start to plan it now so that once it is physically healthy for people to get back to work, we are already ready to go."

Cohen said major industries are already mapping out strategies for a stimulus, so it's never too early to plan.

"They know a stimulus is coming, and they know it's not a question of whether there will be a stimulus, but what kind of stimulus, how big, which parts of the economy, which priorities," he said.

The author team is meant to represent people involved in progressive Democratic presidential campaigns in the 2020 cycle, like Daniel Kammen, a University of California, Berkeley, energy professor who advised Jay Inslee, and Ayana Elizabeth Johnson, a marine biologist who advised Elizabeth Warren.

"We're not taking advantage of this to pursue some partisan agenda," he said. "We need to create jobs, and we know that a dollar in green spending is worth more jobs than a dollar in fossil fuels."

The plan isn't explicitly presented as a tie-in to the Green New Deal, but Cohen said it's "compatible" with the proposal and that a major economic stimulus provides a key opportunity to get started on the kind of spending the Green New Deal would involve. "We see this as a pragmatic thing, and we want to get as much of this done as possible," he said.

*Reporter Kellie Lunney contributed.*

## **EPA**

### **Policy to limit telework emerges during pandemic**



A new EPA policy aims to restrict telework. Wiyre Media/Flickr

*This story was updated at 8:45 p.m. EDT.*

EPA has moved forward on a new policy that would restrict telework even as agency leadership has encouraged staff to work from home during the coronavirus outbreak.

The new EPA order obtained by E&E News would require employees to report to the office at least three days every week.

"Full-time employees are expected to report to the official worksite and duty station a minimum of three (3) days per week," says the order, dated as approved on Feb. 27. It went into effect March 15 — that night, EPA Administrator Andrew Wheeler authorized telework for the entire agency due to the pandemic.

The order focuses on EPA employees' work schedules and gives them new flexibilities that could come in handy during a public health emergency like the COVID-19 virus.

It also stipulates a deep reduction in EPA employees' capability to work remotely, leaving them with two days of telework per week. An agency order on telework, issued in January 2016, said staff could telework full time.

"The EPA supports the use of telework," said that order. "Regular telework may range from one day per pay period up to full time."

An EPA spokeswoman said the new order doesn't change the agency's guidance to staff to work from home during the pandemic.

"The health and safety of our employees is our top priority, and that is why we have requested that all employees telework until at least April 3. There is no provision in the work schedules policy, telework policy or collective bargaining agreement that limits this request," said the spokeswoman.

"While EPA did implement the national work schedule policy effective 3/15/2020, it was implemented in order to provide increased work schedule flexibilities for non-bargaining unit employees who were not previously afforded flexible schedules, including maxiflex," she added.

"The implementation of the policy does not currently impact telework opportunities for EPA employees, and EPA has strongly encouraged all staff to telework," she said.

Still, the new order has caused consternation among EPA employees.

One EPA manager described it as another move by the Trump administration to restrict telework across the government.

"Amidst the COVID-19 crisis, this policy seems particularly ill-timed and unwise. It doesn't even give the administration the chance to evaluate the situation once the COVID-19 pandemic passes," said the manager.

"I think this is a dramatic change in the flexibilities available to the EPA employees without any data to support such a drastic move," the manager said. "It has huge ramifications for employees, many of whom commute over an hour each way to the office, increasing air pollution in the process."

Another EPA staffer said, "I honestly think such an order, given current circumstances, would elicit little more than a scoff and a smirk."

The person added, "How tone-deaf and heavy-handed can one administration be?"

*Inside EPA* first reported on the new order. E&E News obtained the memo independently.

The recently issued policy applies only to non-bargaining-unit employees, including "full-time and part-time" agency staff as well as "supervisors and managers in the competitive, excepted, Senior Level, Scientific and Professional, and Senior Executive Service positions."

In addition, the order covers "Public Health Service Officers, Schedule C, Administratively Determined employees and non-EPA employees serving on Intergovernmental Personnel Act assignments to EPA."

Nevertheless, EPA employees covered under union contracts must adhere to those contracts if the policy runs counter to them.

"If provisions of this order conflict with the provisions of a collective bargaining agreement, the provisions of the agreement must be applied," the order says.

EPA has taken a more restrictive approach with the agency's largest union, American Federation of Government Employees Council 238, which represents about 7,500 EPA employees. EPA imposed a contract on the council's bargaining unit employees last July that limited them to one day of telework per week, among other changes that triggered union protests.

EPA and AFGE have since relaunched contract negotiations, and how to handle telework is one of the issues under discussion. Both sides committed to complete those bargaining talks by April 15 and work with the Federal Service Impasses Panel if needed (*Greenwire*, Feb. 27).

## **Both sides of the telework debate**

EPA's new order has been under consideration for some time.

E&E News obtained a draft version last year. The agency had circulated it for comment in July, noting the proposal "limits the number of days an employee may telework per week," among other changes (*Greenwire*, Sept. 12, 2019).

EPA, like other federal agencies under the Trump administration, has sought to reduce employees' telework. That effort, though, has run into the headwinds of a global pandemic, leading agency leaders to reverse course and now encourage staff to work remotely in order to stop the spread of the COVID-19 virus.

Wheeler in an email last week told staff that he authorized telework for employees across the country. Federal worker unions had sought the opportunity for remote work on behalf of EPA employees, and the agency had already relaxed telework policies at various offices the prior week where the coronavirus had begun to take hold.

The EPA spokeswoman said the agency moved toward telework after guidance from other agencies.

"Consistent with [Office of Management and Budget], [Centers for Disease Control and Prevention] and [Office of Personnel Management] guidance, along with state and local directives, we have taken swift action in regions and at headquarters to implement telework for all employees. We continue to tell all employees to telework," said the spokeswoman.

Wheeler said in a later [video message](#) that his expectation was most EPA employees were working from home.

"I understand that this is a difficult and scary time for all of us," said the EPA administrator.

The coronavirus has become a real challenge for EPA.

Agency staff have been exposed to the virus while some have tested positive, according to internal emails. That has led to employees self-quarantining while their colleagues worry they may next fall ill ([Greenwire](#), March 20).

One employee said that since EPA's operations have been maintained with staff working from home, it's harder for the Trump administration to justify restricting remote work.

"With the current climate, I think employees have shown we can keep the agency going with nearly 95% teleworking full time. It makes their argument hard to justify in light of things," said the EPA employee.

The Trump administration overall has pushed for more remote work by the federal workforce in the battle with the COVID-19 virus. The Office of Management and Budget issued [guidance](#) to agencies last week "to minimize face-to-face interactions" and "maximize telework across the nation."

Lawmakers have also pushed to expand telework for federal workers due to the virus.

Democratic senators sent a [letter](#) last week urging President Trump to issue an executive order directing agencies to use telework.

In addition, Sens. James Lankford (R-Okla.), Chris Van Hollen (D-Md.) and Kyrsten Sinema (D-Ariz.) introduced [legislation](#) that would allow federal employees to telework full time during the pandemic.

Some worry EPA's new order could further sour morale at the agency after the pandemic passes. Employees may leave if they can't work from home more.

"People will quit EPA over something like this. Maybe that's the goal," said the EPA manager.

## **PESTICIDES**

### **Enviros sue over EPA approval of possible carcinogen**

[Marc Heller](#), E&E News reporter



Glyphosate is the active ingredient in the weedkiller Roundup. Mike Mozar/Flickr

Two environmental groups sued EPA to block the agency's latest approval of the weedkiller glyphosate, a controversial chemical caught in a legal tangle over its potential to cause cancer.

In a [lawsuit](#) filed in the 9th U.S. Circuit Court of Appeals in San Francisco, the Natural Resources Defense Council and the Pesticide Action Network North America said EPA overlooked dangers such as glyphosate residue in food, damage to habitat for pollinators and the possibility that the chemical causes cancer — a link that scientists at EPA say they haven't established.

"In rubberstamping glyphosate once again, EPA ignored warnings from the scientific and environmental community," said Sylvia Fallon, senior director of wildlife at NRDC, in a news release.

"Glyphosate is eradicating habitat for pollinators just as bees and butterflies are experiencing sharp population declines due to human activity," Fallon said. "This toxic chemical is also linked to human health risks including cancer, which EPA continues to deny."

The alleged cancer link comes from a report by the International Agency for Research on Cancer, an arm of the World Health Organization, which said glyphosate is probably carcinogenic. The IARC has been an outlier on the issue among agencies, but the maker of the Roundup brand of glyphosate, Bayer, has been losing lawsuits on the issue as juries side with cancer victims.

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Bayer, farm organizations and EPA point to years of study that they say prove glyphosate is safe when used according to label instructions. It's widely used in agriculture, including on crops such as corn that are bred for resistance, although weeds have started to show resistance, as well.

EPA completed a regulatory review of glyphosate in January, extending its registration while adding requirements to lessen the risk of contaminating neighboring fields for which it's not intended.

In finishing the review, the agency said: "EPA has concluded that there are no risks of concern to human health when glyphosate is used according to the label and that it is not a carcinogen. These findings on human health risk are consistent with the conclusions of science reviews by many other countries and other federal agencies, including the U.S. Department of Agriculture, the Canadian Pest Management Regulatory Agency, the Australian Pesticide and Veterinary Medicines Authority, the European Food Safety Authority, and the German Federal Institute for Occupational Safety and Health."

The environmental groups said glyphosate has been linked to elevated risk birth defects in humans and can easily find a way into food because it moves easily through soil and water. It also kills milkweed, the primary diet of monarch butterflies, "threatening their existence," the groups said.

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